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GOVERNMENT OF PUNJAB

DEPARTMENT OF INDUSTRIES AND COMMERCE

(INCENTIVE BRANCH)

NOTIFICATION

The 13th November, 2019

No. Incentive/Sub/2019-20/DA-7/11371-A.- The Governor of Punjab is pleased to notify the Guidelines for disbursement of sanctioned Capital Subsidy/Investment Incentive to the Industrial Units under the Industrial Policies of 1978, 1987, 1989, 1992, 1996 & 2003 in pursuance to the Notification no. INC/Subsidy/14431-A dated 21.11.2016

GUIDELINES

The instant Guidelines set out specific cases and circumstances under which the Department of Industries and Commerce shall release and disburse the sanctioned capital subsidy or the sanctioned investment incentive under the Industrial Policy of 1978, 1987, 1989, 1992, 1996 and 2003 [the **relevant Industrial Policies**] to the entities who were not released such sanctioned subsidy/incentive. Such non release may have taken place due to pendency of litigation involving the issue of release of such subsidy/incentive [*i.e. the CWP No. 19007 of 2002 titled Balak Gases Oxygen Gas Plant and another Vs. State of Punjab and connected matters (the **Balak Gases cases**), the order and judgement in which has since attained finality, the LPA and SLP preferred against this order and judgment having been dismissed.*] and/or for other reasons such as the Industrial Unit having shut down/closed down or occurrence of change in constitution of the Industrial Unit etc.

These Guidelines are premised on the fact the capital subsidy/investment incentive being claimed under either of the relevant Industrial Policies was in fact sanctioned at some point in time under these/such relevant Industrial Policies. Thus, the Department of Industries and Commerce's release/disbursal of such capital subsidy/investment incentive proceeds on the assumption that there is a valid letter of sanction and the Entity making such claim can produce/ prove such sanction in/to its favour if so required.

Without prejudice to these Guidelines, the Department of Industries and Commerce reserves its right

to recover such released/disbursed subsidy in the event such release/disbursal is found to have been obtained/released/occasioned by fraud, misrepresentation, error or non-disclosure. It is thus understood and accepted that the Entity claiming under these Guidelines is under an obligation to disclose all such relevant and material facts and documents having bearing on its case of release/disbursal of sanctioned capital subsidy/investment incentive.

These Guidelines are a result of various meetings of the High-Level Committee constituted specifically under the chairmanship of Chief Secretary, Punjab, to determine cases and circumstances warranting release of sanctioned capital subsidy to entities who as on date may stand closed, undergone change in constitution, been sold of etc. These Guidelines categorizes the entities based on their updated legal and operating status and further sub-categorizes them wherever required based on the nature of their incorporation and/or change in ownership and/or constitution and other such relevant factors.

- 1. A Non-Existent Closed Entity/Industrial Unit:** This category applies to those Entities/Industrial Units which are no longer juristic entities/are legally dead and have closed down/ceased to exist for various reasons such as death of a Sole Proprietor, dissolution of Partnership or winding up of a Company (as the case may be).

- 1.1. Sole Proprietorship—**A Sole Proprietorship automatically terminates upon the death of its Sole Proprietor and thus no longer remains a juristic entity in the eyes of law existing legally. Since the sanctioned capital subsidy/incentive, being in the nature of a privilege/concession, cannot be claimed as a matter of right, the legal heirs of the deceased Sole Proprietor acquire no right in law to such sanctioned capital subsidy/incentive upon his/her death.

Hence, sanctioned capital subsidy/incentive is not payable in the event of death of a Sole Proprietor with whose death the Sole Proprietorship then ceases to exist legally.

1.2. Partnership Firm

1.2.1. Dissolution of a Partnership Firm

A dissolved partnership ceases to be a legal person/juristic entity and is thus not entitled to be released/disbursed the sanctioned capital subsidy/investment incentive upon/after its dissolution. A Partnership Firm is governed by a Partnership Deed/Contract if any and the provisions of the Partnership Act, 1932.

A Partnership Firm which dissolves for the reasons set out in the Partnership Act, 1932 or the Partnership Contract/Deed ceasing to be a juristic entity would not be entitled to the sanctioned capital subsidy/ incentive. Needless to say, the provisions of the Partnership Act, 1932 would be taken into account while deciding not to release/disburse sanctioned capital subsidy/incentive under this category.

In addition to any events/type of dissolution contemplated in the Partnership Deed/Contract rendering the Entity/Industrial Unit disentitled to release/disbursal of capital subsidy/investment incentive, the following types and/or events of dissolution would also render the Industrial Unit disentitled to release/disbursal of sanctioned capital subsidy/investment incentive: -

- (1) Dissolution by agreement/consent of all Partners or in accordance with a contract/deed between Partners under Section 40 of the Partnership Act, 1932

- (2) Compulsory Dissolution as contemplated under Section 41 of the Partnership Act, 1932 upon either of the following two events happening:
 - (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
 - (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership.

Provided that where more than one separate adventure or undertaking is carried on by the firm, the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

- (3) Dissolution upon happening of certain contingencies/ events as contemplated under Section 42 of the Partnership Act, 1932 which is subject to contract between the partners/ Partnership Deed:
 - (a) if constituted for a fixed term, by the expiry of that term;
 - (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
 - (c) by the death of a partner; and
 - (d) by the adjudication of a partner as an insolvent.
- (4) Dissolution by Notice of Partnership at Will as contemplated under Section 43 of the Partnership Act, 1932:
 - (a) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
 - (b) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.
- (5) Dissolution of the Partnership Firm by Court for the grounds mentioned in Section 44 of the Partnership Act 1932.

1.2.2. Reconstitution/Change in Constitution of the Partnership Firm

Change in constitution as a legal concept is distinct from 'Dissolution' because dissolution ends the very juristic existence of the Partnership Firm, whereas a 'change in constitution' means the continuation of the Partnership Firm under altered circumstances (such as on addition or reduction of the numbers of original partners). Therefore, there would be no impediment for release of sanctioned subsidy/ investment incentive to an Entity/ Industrial Unit being a Partnership Firm that has undergone reconstitution/change in constitution (unless such impediment flows from relevant policy/scheme under which the subsidy was sanctioned). This is especially so, when the original terms and conditions of disbursal/release do not contemplate bar on/ stoppage of release/d disbursal of sanctioned subsidy/investment incentive upon such change in constitution/reconstitution. Hence, a Partnership Firm that has undergone such a limited change in its constitution may be released the sanctioned subsidy/investment incentive.

1.2.3. Other cases

- (1) **Deemed Dissolution**—A Partnership Firm contemplates/presupposes at least/minimum two persons

as Partners. Therefore, where there are only two Partners constituting the Partnership Firm, upon the death of one of them, the Partnership Firm is deemed to be dissolved irrespective of the Partnership Deed if any, and is legally non-existent. Hence, sanctioned capital subsidy/incentive is not payable in such event.

- (2) **Resignation/Retirement of all Partners except one**—Where all the partners of the Partnership Firm retired or resigned except one partnership leaving the Partnership Firm to be run only by one partner would be sufficient to conclude that the Partnership Firm stands dissolved. This is because a legally subsisting Partnership Firm presupposes a minimum of two persons as Partners. Thus, in this event, the capital subsidy/investment incentive which was originally sanctioned to the Partnership can not be disbursed to the Industrial Unit which has now been/stands reduced to a sole proprietorship.
- (3) **Partnership run by family members**—A Partnership of family members where all the family members decide to quit the Partnership Firm except one family member, is no longer a legally subsisting Partnership Firm. Upon the resignation/exit/retirement of all family members except one, such an Industrial Unit stands reduced to a sole proprietorship which is legally not the same entity as the Partnership Firm in whose favour the capital subsidy/investment incentive stood sanctioned. Thus, in such an event, the Industrial Unit is not entitled to release/disbursal of the sanctioned capital subsidy/investment incentive.
- (4) **Exit of Partners with simultaneous induction of New Partners**— Where the Entity/Industrial Unit being a Partnership Firm had inducted new partners upon exit of old partners then the Partnership Deed/Contract may be adverted to understand whether a new Partnership comes into existence or the old Partnership survives:
 - a. If a new Partnership Firm comes into existence, then the Entity/Industrial Unit is not entitled to the release/disbursal of the sanctioned capital subsidy/investment incentive (originally in favour of the old Partnership Firm)
 - b. If the Partnership Firm (old) continues despite induction of new partners and exit of old partners, then the entity/Industrial Unit is entitled to the release/disbursal of the sanctioned capital subsidy/investment incentive.

If there is no Partnership Deed/Contract in place, there being no impediment in the relevant policy/scheme of the time to release/disbursal of sanctioned capital subsidy/investment incentive upon such Reconstitution/Change in Constitution, the Entity/Industrial Unit may be released such sanctioned capital subsidy/investment incentive.

- (5) **A Partnership Firm that has reconstituted/reincorporated as a Limited Company**— An Entity/Industrial Unit that was a Partnership Firm at the time of sanction of capital subsidy/investment incentive but has post such sanction become/reincorporated/changed into a Limited Company, would not be entitled to release/disbursal of such sanctioned capital subsidy/investment incentive. This is because a Partnership Firm is fundamentally and legally distinct from a Limited Company and once a new entity has emerged as a Limited Company its legal identity as Partnership Firm is no longer in existence.

1.3. Public/Private Limited Company—

- 1.3.1. **Active Status** – An Entity/Industrial Unit which is a public or private limited company incorporated/

established under the provisions of the Companies Act, 1956 is entitled to release/disbursal of sanctioned capital subsidy/investment incentive so long as it continues to actively run its operations as per the records of the Registrar of Companies (the ROC). Therefore, upon confirmation of its 'active' status as per the records of the ROC, the Entity/Industrial Unit may be released the sanctioned capital subsidy/investment incentive due to it.

1.3.2. Wound up/Struck off/No records existing with ROC—An Entity/Industrial which was a public or private limited company incorporated/established under the provisions of the Companies Act, 1956 and as on date/today has ceased to exist in the records of the ROC upon being wound up and/or having decided to end its operations, is not entitled to release of sanctioned capital subsidy/investment incentive.

1.3.3. Under Liquidation/Being Liquidated – An Entity/Industrial Unit which is a public or private limited company incorporated/established under the provisions of the Companies Act, 1956 but is currently under liquidation or is being liquidated as on the date of claiming of the sanctioned subsidy/investment incentive is made, the Liquidator or Resolution Professional duly appointed to manage the affairs of the Company by virtue of Court orders/concerned Court authority shall be released/disbursed the sanctioned subsidy/investment incentive. Further, if the Entity/Industrial Unit which is under liquidation is a defaulter of the Department of Interest Free Loan or State Financial Institutions such as PFC, PSIDC etc., then the first charge on such sanctioned subsidy/investment incentive shall be of the Department of Interest Free Loan and the second charge would be that of the State Financial Institutions. The balance if any shall be released/disbursed to the Liquidator or Resolution Professional for the Entity/Industrial Unit under liquidation/being liquidated.

2. Sale of Industrial Unit—This category related to cases where it is being claimed that the Entity/Industrial Unit has been "sold off" to another entity and the claim is being made either by the erstwhile Entity/Industrial Unit or the subsequent Buyer/Purchaser. Generally, since the State Government has no agreement with new purchaser company/firm/unit, it would not be liable to release the sanctioned subsidy/investment incentive to such Purchaser Entity/Industrial Unit. Moreover, grant of a subsidy is in the nature of a privilege/concession and cannot be claimed as a matter of the Purchaser Entity/Industrial Unit. However, in case any subsidy has accrued prior to the sale the treatment of such subsidy and its disbursal would have to be tested under various scenarios as under: -

2.1. Asset Sale – Where only the assets of the Entity/Industrial Unit are sold off partially or completely to the Purchaser and the Entity/Industrial Unit continues to exist as a legal entity [i.e. does not come under any of the above mentioned "Closed Down" categories] the sanctioned subsidy/investment incentive shall be released only to the Seller Entity i.e. the Entity/Industrial Unit to whom the original sanction was made and not to the Purchaser. Any private arrangements including sale/purchase merely of the assets of the Entity/Industrial Unit cannot bind the State. In the case of mutual understanding claimed between seller (the original Entity/Industrial Unit) and Purchaser of the Entity/Industrial Unit regarding the transfer of the subsidy upon such sale the case shall be considered for release to the Purchases only on production of valid sale deed evidencing such alleged transfer of the right to subsidy and after obtaining Indemnity bond from the seller of the Entity/Industrial unit releasing the State of any obligation of further payment. Hence, only the original Entity/Industrial Unit (i.e. the Seller Entity) would be entitled to the release/disbursal of the sanctioned subsidy/investment incentive.

2.2. Sale of Business as a Going Concern– Where the Entity Industrial Unit sells its entire operations/business to the Purchaser as a Going Concern sale of business, but the Entity/Industrial Unit continues to exist, the sanctioned subsidy/investment incentive shall be released/dispensed only to the Entity/Industrial Unit i.e. the seller entity. However, the Entity/Industrial Unit claiming such sanctioned subsidy/investment incentive should be legally subsisting as on the date of claiming it and upon verification of records and being satisfied that the Entity/Industrial Unit legally exists (despite sale of its business) such Entity/Industrial Unit may be released such subsidy/investment incentive.

2.3. Amalgamation – Where the Entity/Industrial Unit is subsumed into another entity upon amalgamation, the Industrial Unit no longer legally survives. However, the new entity resulting out of the existing assets, liabilities, receivables and payables of the erstwhile Entity/Industrial Unit combined with the assets and liabilities of another entity, would enjoy the benefit of assets of the Entity/Industrial Unit, this deemed to have been part of the valuation exercise of such amalgamation. In such scenario the sanctioned subsidy/investment incentive may be released to the amalgamated entity as part of its assets.

3. Entity/Industrial Units that have Shifted:

3.1. In the event the Entity(s)/Industrial Units have shifted their place of operation/running of industry/doing business within the State from the place where subsidy was sanctioned, then the subsidy shall be dispensed subject to the condition that the unit shall be required to submit proof of total FCI and its eligibility in the new area as per relevant Industrial Policy. The new location where and when it has shifted, shall be certified by the concerned General Manager, District Industries Centre.

3.2. In case the Entity/Industrial Unit shifts to an area which offers lower slab of subsidy than that from its original habitat area, then the lower slab will be considered for the release of subsidy. If an industrial unit shifts to an area which offers higher quantum of subsidy, then in such case, the subsidy initially sanctioned, shall be considered for disbursement. In cases where the Industrial units which have been sanctioned capital subsidy under the Industrial Policy-2003 (which was made for the development of the Border Areas in the State), in such cases if the unit shifted from Border District to other districts then, the unit will not be considered for the grant of subsidy. Needless to say, the changes which occur on account of such shift shall come into effect and computed from the date of such shift of location.

4. Industrial Units that have received subsidy from NABARD, GOI or otherwise– Entity(s)/Industrial Units which have received subsidy from the NABARD or from Government of India are also entitled to the sanctioned subsidy irrespective of having received/sanctioned subsidy elsewhere i.e. under a different scheme or by Government of India. This is subject to the condition that the relevant Industrial Policy does not contain any specific condition/embargo disentitling the Entity/Industrial Unit from receiving the sanctioned subsidy/investment incentive.

5. Industrial Units where Land is not in the Name of Firm/ Industrial Unit: Those Entity(s)/Industrial Units which will furnish the proof of title of land and that the land has been duly capitalized in the books of accounts of the unit/ firm, subsidy shall be dispensed to such industrial units.

6. **Defaulters of The State Financial Institutions:** In case of an Entity/Industrial Unit which is a defaulter on account of any term loan/bridge loan of State Financial Institutions i.e. PFC/ PSIDC, then such cases the subsidy will be directly released to the concerned Financial Institution. Balance amount, if any, be released to the Entity/Industrial Unit after obtaining NOC from the State Financial Institution.
7. **Clarifications/Interpretation/Removal of Difficulty:** In the event of any ambiguity as regards the implementation or interpretation of these guidelines the matter shall be referred to the Administrative Secretary Industries and Commerce, whose decision in the matter shall be final.

Sd/-

(VINI MAHAJAN, IAS)

Additional Chief Secretary,
Government of Punjab.